

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

<b>FOTOMEDIA TECHNOLOGIES, LLC,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>CIVIL ACTION NO. 2:07-cv-255-TJW</b>
	§	
<b>v.</b>	§	
	§	
<b>AOL LLC, AMERICA ONLINE, INC., PHOTOBUCKET.COM, INC., SHUTTERFLY, INC., CNET NETWORKS, INC., AND YAHOO! INC.,</b>	§	
	§	
<b>Defendants.</b>	§	<b>JURY TRIAL DEMANDED</b>

**PLAINTIFF'S ORIGINAL COMPLAINT**

Plaintiff FotoMedia Technologies, LLC ("FotoMedia") files this Original Complaint for patent infringement against Defendants, AOL LLC, America Online, Inc., PhotoBucket, Inc., Shutterfly, Inc., CNET Networks, Inc., and Yahoo! Inc., (collectively "Defendants").

**PARTIES**

1. Plaintiff FotoMedia Technologies, LLC, is a Delaware limited liability company having its principal place of business at 155 Fleet Street, Portsmouth, New Hampshire, 03801.

2. Upon information and belief, Defendant AOL LLC is a Delaware limited liability company having its principal place of business at 22000 AOL Way, Dulles, Virginia 20166. Upon information and belief, Defendant America Online, Inc. is a corporation existing under the laws of Delaware with its principal place of business at 10600 Infantry Ridge Road, Manassas, VA 20109. AOL LLC and America OnLine, Inc. are collectively called the "AOL Defendants."

3. Upon information and belief, Defendant PhotoBucket.Com, Inc. ("Photobucket") is a corporation existing under the laws of Delaware with its principal place of business at 921 Walnut St., Suite 200, Boulder, Colorado 80302.

4. Upon information and belief, Defendant Shutterfly, Inc. (“Shutterfly”) is a corporation existing under the laws of Delaware with its principal place of business at 2800 Bridge Parkway, Redwood City, CA 94065.

5. Upon information and belief, Defendant CNET Networks, Inc. (“CNET Networks”) is a corporation existing under the laws of Delaware with its principal place of business at 235 Second Street, San Francisco, CA 94105.

6. Upon information and belief, Defendant Yahoo! Inc. (“Yahoo”) is a corporation existing under the laws of Delaware with its principal place of business at 701 First Avenue, Sunnyvale, CA 94089.

### **JURISDICTION AND VENUE**

7. This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 271.

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. The Defendants do business in this State and District and have sufficient contacts to subject them to the personal jurisdiction of this Court for this patent infringement action. The Defendants have placed their products and services, including infringing products and services, into the stream of commerce, knowing or reasonably expecting that such products will be used, sold, or offered to be sold in this State and in this District.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

### **BACKGROUND**

11. On January 25, 2000, the USPTO duly and legally issued United States Patent No. 6,018,774 (“the ’774 patent”), entitled “Method and System for Creating Messages Including

Image Information.” FotoMedia holds all right, title, and interest in and to the ’774 patent (a true and correct copy of which is attached hereto as Exhibit A).

12. On April 1, 2003, the USPTO duly and legally issued United States Patent No. 6,542,936 B1 (“the ’936 patent”), entitled “System for Creating Messages Including Image Information.” FotoMedia holds all right, title, and interest in and to the ’936 patent (a true and correct copy of which is attached hereto as Exhibit B).

13. On March 22, 2005, the USPTO duly and legally issued United States Patent No. 6,871,231 B2 (“the ’231 patent”), entitled “Role-Based Access to Image Metadata.” FotoMedia holds all right, title, and interest in and to the ’231 patent (a true and correct copy of which is attached hereto as Exhibit C).

14. The AOL Defendants own, operate, or otherwise control photosharing web sites, including <http://pictures.aol.com>.

15. Defendant PhotoBucket owns, operates, or otherwise controls photosharing web sites, including <http://photobucket.com>.

16. Defendant Shutterfly owns, operates, or otherwise controls photosharing web sites, including <http://www.shutterfly.com>.

17. Defendant CNET Networks owns, operates, or otherwise controls photosharing web sites, including the Webshots web site at <http://www.webshots.com>.

18. Defendant Yahoo owns, operates, or otherwise controls photosharing web sites, including the Flickr site found at <http://www.flickr.com> and the Yahoo! Photos site found at <http://photos.yahoo.com>.

19. Upon information and belief, Defendants make, use, license, sell, offer for sale, or import in the State of Texas, in this judicial district, and elsewhere within the United States

photosharing web site services that alone or in combination with personal computers infringe the '774, '936, and '231 patents, as well as related services.

**COUNT I: INFRINGEMENT OF THE '774 PATENT**

20. FotoMedia realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 19.

21. The AOL Defendants, PhotoBucket, Shutterfly, CNET Networks, and Yahoo have been and are now directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of, the '774 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing photosharing web site services alone or in combination with personal computers, as well as related services covered by one or more claims of the '774 patent, all to the injury of FotoMedia.

22. The AOL Defendants', PhotoBucket's, Shutterfly's, CNET Networks', and Yahoo's acts of infringement have been willful, deliberate, and in reckless disregard of FotoMedia's patent rights, and will continue unless permanently enjoined by this Court.

23. FotoMedia has been damaged by The AOL Defendants', PhotoBucket's, Shutterfly's, CNET Networks', and Yahoo's infringement of the '774 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Defendants are permanently enjoined from infringing the '774 patent.

**COUNT II: INFRINGEMENT OF THE '936 PATENT**

24. FotoMedia realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 19.

25. The AOL Defendants, PhotoBucket, Shutterfly, CNET Networks, and Yahoo have been and are now directly infringing, and indirectly infringing by way of inducing

infringement and/or contributing to the infringement of, the '936 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing photosharing web site services alone or in combination with personal computers, as well as related services covered by one or more claims of the '936 patent, all to the injury of FotoMedia.

26. The AOL Defendants', PhotoBucket's, Shutterfly's, CNET Networks', and Yahoo's acts of infringement have been willful, deliberate, and in reckless disregard of FotoMedia's patent rights, and will continue unless permanently enjoined by this Court.

27. FotoMedia has been damaged by The AOL Defendants', PhotoBucket's, Shutterfly's, CNET Networks', and Yahoo's infringement of the '936 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Defendants are permanently enjoined from infringing the '936 patent.

### **COUNT III: INFRINGEMENT OF THE '231 PATENT**

28. FotoMedia realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 19.

29. The AOL Defendants, PhotoBucket, Shutterfly, CNET Networks, and Yahoo have been and are now directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of, the '231 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing photosharing web site services alone or in combination with personal computers, as well as related services covered by one or more claims of the '231 patent, all to the injury of FotoMedia.

30. The AOL Defendants', PhotoBucket's, Shutterfly's, CNET Networks', and Yahoo's acts of infringement have been willful, deliberate, and in reckless disregard of FotoMedia's patent rights, and will continue unless permanently enjoined by this Court.

31. FotoMedia has been damaged by The AOL Defendants', PhotoBucket's, Shutterfly's, CNET Networks', and Yahoo's infringement of the '231 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Defendants are permanently enjoined from infringing the '231 patent.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff FotoMedia Technologies, LLC prays for the following relief against Defendants:

A. A judgment in favor of FotoMedia that Defendants have infringed, directly and indirectly by way of inducing infringement and/or contributing to the infringement of, FotoMedia's '774, '936, and '231 patents;

B. A permanent injunction, enjoining Defendants and their officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, and parents from infringing, inducing the infringement of, or contributing to the infringement of FotoMedia's '774, '936, and '231 patents;

C. A judgment and order requiring Defendants to pay FotoMedia damages for the infringement of FotoMedia's '774, '936, and '231 patents, together with interest (both pre- and post-judgment), costs and disbursements as fixed by this Court under 35 U.S.C. § 284;

D. A judgment and order finding Defendants' infringement willful and awarding treble the amount of damages and losses sustained by Defendants as a result of their infringement under 35 U.S.C. § 284;

E. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to FotoMedia its reasonable attorneys' fees; and

F. Such other and further relief in law or in equity to which FotoMedia may be justly entitled.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of any and all issues triable of right before a jury.

Respectfully submitted,

**McKOOL SMITH P.C.**

By: /s/ Mike McKool, Jr.

Mike McKool, Jr.

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